

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

S.C. SUIT NO.3480 OF 1986

Central Bank of India .. Plaintiffs

Vs.

Hemal Apparel & Ors. .. Defendants

Mr.M.D.Yelkar for the plaintiffs

Mr.D.R.Shah i/b M/s.A.C.Singh & Mr.R.P.Singh for
the defendant no.2

CORAM: S.U. KAMDAR, J.

DATE : 9TH AUGUST, 2005

P.C. :

1. The present suit is filed for the recovery of the sum of Rs.55,981.01 due and payable by the defendant no.1 under the cash credit loan facility and sum of Rs.33,891.75 under the guarantee. The interest at the rate of 15% p.a. from the date of the suit is also claimed by the plaintiffs in the present case. Some of the material facts in the present case are briefly enumerated as under.

2. That the defendant no.2 is a sole proprietor.

Defendant no.1 and 3 are sued in their capacity as Guarantor. Sometime in or about May 1979 defendant no.2 approached the plaintiffs for obtaining term loan and cash credit facility and executed necessary security documents including letter of proprietorship, demand promissory note, letter of continuing security and hypothecation of the goods. It is the case of the plaintiffs that the defendant no.1 and 2 also agreed for interest @ 15% p.a. In respect of the aforesaid amount, defendant no.3 executed a guarantee and under the said facility, defendant no.2 availed of the cash credit facility. The amount was disbursed to defendant no. 1 and 2. On 5.5.82, defendant no.3 executed a letter of guarantee and stated that he will not be liable for any amount exceeding Rs.19,000/- on the said account. However, the said account was irregular and the defendants did not repay any amount whatsoever to the plaintiffs back. Accordingly, the Advocate for plaintiffs issued a letter dt.2.1.85 and called upon the defendants to pay to the plaintiffs an outstanding amount of Rs.47,753.11 payable upto 31.1.85 with the further interest thereon @ 15% p.a. Since there was no reply, plaintiffs also addressed another letter dt.21.2.86 calling upon the defendants to pay the

amount of Rs.53,968.11 as due and payable by them to the plaintiffs with further interest thereon @ 15% p.a. In spite of the aforesaid notice, defendants neither paid the said amount nor replied the same. Accordingly, the present suit has been filed. The learned counsel for defendant no.1 and 2 states that he has no instructions to prosecute the matter. Defendant no.3 has not filed even Vakalatnama in the present suit. Plaintiffs have tendered documents dt.22.6.05. Defendant no.2 is sole proprietor of defendant no.1 and has merely denied the said liability. The denials in the written statement are totally vague and without any merits. Plaintiffs have filed documents which are taken on record and marked Ex.P-1 collectively. There is no challenge of any nature whatsoever to the case of the plaintiffs. In view of the aforesaid position, suit is decreed in terms of prayer clause (a) and (b). No order as to costs.